

REFERENCE TITLE: **misconduct involving weapons; ammunition**

State of Arizona
House of Representatives
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Second Regular Session
2008

HB 2481

Introduced by
Representatives Adams: Campbell CH, Crandall, Crump, Konopnicki

AN ACT

**AMENDING SECTIONS 13-3101, 13-3102, 13-3110 AND 13-3112, ARIZONA REVISED
STATUTES; RELATING TO WEAPONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3101, Arizona Revised Statutes, is amended to
3 read:

4 13-3101. Definitions

5 A. In this chapter, unless the context otherwise requires:

6 1. "AMMUNITION" MEANS AMMUNITION, CARTRIDGE CASES, PRIMERS, BULLETS OR
7 PROPELLANT POWDER DESIGNED FOR USE IN ANY FIREARM.

8 ~~1-~~ 2. "Deadly weapon" means anything that is designed for lethal
9 use. The term includes a firearm.

10 ~~2-~~ 3. "Deface" means to remove, alter or destroy the manufacturer's
11 serial number.

12 ~~3-~~ 4. "Explosive" means any dynamite, nitroglycerine, black powder or
13 other similar explosive material, including plastic explosives. Explosive
14 does not include ammunition or ammunition components such as primers,
15 percussion caps, smokeless powder, black powder and black powder substitutes
16 used for hand loading purposes.

17 ~~4-~~ 5. "Firearm" means any loaded or unloaded handgun, pistol,
18 revolver, rifle, shotgun or other weapon that will expel, is designed to
19 expel or may readily be converted to expel a projectile by the action of an
20 explosive. Firearm does not include a firearm in permanently inoperable
21 condition.

22 ~~5-~~ 6. "Occupied structure" means any building, object, vehicle,
23 watercraft, aircraft or place with sides and a floor that is separately
24 securable from any other structure attached to it, that is used for lodging,
25 business, transportation, recreation or storage and in which one or more
26 human beings either are or are likely to be present or so near as to be in
27 equivalent danger at the time the discharge of a firearm occurs. Occupied
28 structure includes any dwelling house, whether occupied, unoccupied or
29 vacant.

30 ~~6-~~ 7. "Prohibited possessor" means any person:

31 (a) Who has been found to constitute a danger to himself or to others
32 pursuant to court order under section 36-540, and whose court ordered
33 treatment has not been terminated by court order.

34 (b) Who has been convicted within or without this state of a felony or
35 who has been adjudicated delinquent for a felony and whose civil right to
36 possess or carry a gun or firearm has not been restored.

37 (c) Who is at the time of possession serving a term of imprisonment in
38 any correctional or detention facility.

39 (d) Who is at the time of possession serving a term of probation
40 pursuant to a conviction for a domestic violence offense as defined in
41 section 13-3601 or a felony offense, parole, community supervision, work
42 furlough, home arrest or release on any other basis or who is serving a term
43 of probation or parole pursuant to the interstate compact under title 31,
44 chapter 3, article 4.

1 (e) Who is a prohibited possessor under 18 United States Code section
2 922(g)(5), except as provided by 18 United States Code section 922(y).

3 ~~7-~~ 8. "Prohibited weapon" means, but does not include fireworks
4 imported, distributed or used in compliance with state laws or local
5 ordinances, any propellant, propellant actuated devices or propellant
6 actuated industrial tools that are manufactured, imported or distributed for
7 their intended purposes or a device that is commercially manufactured
8 primarily for the purpose of illumination, including any of the following:

9 (a) Explosive, incendiary or poison gas:

10 (i) Bomb.

11 (ii) Grenade.

12 (iii) Rocket having a propellant charge of more than four ounces.

13 (iv) Mine.

14 (b) Device that is designed, made or adapted to muffle the report of a
15 firearm.

16 (c) Firearm that is capable of shooting more than one shot
17 automatically, without manual reloading, by a single function of the trigger.

18 (d) Rifle with a barrel length of less than sixteen inches, or shotgun
19 with a barrel length of less than eighteen inches, or any firearm that is
20 made from a rifle or shotgun and that, as modified, has an overall length of
21 less than twenty-six inches.

22 (e) Instrument, including a nunchaku, that consists of two or more
23 sticks, clubs, bars or rods to be used as handles, connected by a rope, cord,
24 wire or chain, in the design of a weapon used in connection with the practice
25 of a system of self-defense.

26 (f) Breakable container that contains a flammable liquid with a flash
27 point of one hundred fifty degrees Fahrenheit or less and that has a wick or
28 similar device capable of being ignited.

29 (g) Chemical or combination of chemicals, compounds or materials,
30 including dry ice, that is placed in a sealed or unsealed container for the
31 purpose of generating a gas to cause a mechanical failure, rupture or
32 bursting of the container.

33 (h) Combination of parts or materials that is designed and intended
34 for use in making or converting a device into an item set forth in
35 subdivision (a) or (f) of this paragraph.

36 B. The items set forth in subsection A, paragraph ~~7-~~ 8, subdivisions
37 (a), (b), (c) and (d) of this section do not include any firearms or devices
38 that are registered in the national firearms registry and transfer records of
39 the United States treasury department or any firearm that has been classified
40 as a curio or relic by the United States treasury department.

41 Sec. 2. Section 13-3102, Arizona Revised Statutes, is amended to read:

42 13-3102. Misconduct involving weapons; defenses;
43 classification; definitions

44 A. A person commits misconduct involving weapons by knowingly:

- 1 1. Carrying a deadly weapon without a permit pursuant to section
2 13-3112 except a pocket knife concealed on his person; or
- 3 2. Carrying a deadly weapon without a permit pursuant to section
4 13-3112 concealed within immediate control of any person in or on a means of
5 transportation; or
- 6 3. Manufacturing, possessing, transporting, selling or transferring a
7 prohibited weapon; or
- 8 4. Possessing a deadly weapon, ~~or~~ A prohibited weapon OR AMMUNITION if
9 such person is a prohibited possessor; or
- 10 5. Selling or transferring a deadly weapon to a prohibited possessor;
11 or
- 12 6. Defacing a deadly weapon; or
- 13 7. Possessing a defaced deadly weapon knowing the deadly weapon was
14 defaced; or
- 15 8. Using or possessing a deadly weapon during the commission of any
16 felony offense included in chapter 34 of this title; or
- 17 9. Discharging a firearm at an occupied structure in order to assist,
18 promote or further the interests of a criminal street gang, a criminal
19 syndicate or a racketeering enterprise; or
- 20 10. Unless specifically authorized by law, entering any public
21 establishment or attending any public event and carrying a deadly weapon on
22 his person after a reasonable request by the operator of the establishment or
23 the sponsor of the event or the sponsor's agent to remove his weapon and
24 place it in the custody of the operator of the establishment or the sponsor
25 of the event for temporary and secure storage of the weapon pursuant to
26 section 13-3102.01; or
- 27 11. Unless specifically authorized by law, entering an election polling
28 place on the day of any election carrying a deadly weapon; or
- 29 12. Possessing a deadly weapon on school grounds; or
- 30 13. Unless specifically authorized by law, entering a nuclear or
31 hydroelectric generating station carrying a deadly weapon on his person or
32 within the immediate control of any person; or
- 33 14. Supplying, selling or giving possession or control of a firearm to
34 another person if the person knows or has reason to know that the other
35 person would use the firearm in the commission of any felony; or
- 36 15. Using, possessing or exercising control over a deadly weapon in
37 furtherance of any act of terrorism as defined in section 13-2301 or
38 possessing or exercising control over a deadly weapon knowing or having
39 reason to know that it will be used to facilitate any act of terrorism as
40 defined in section 13-2301.
- 41 B. Subsection A, paragraph 1 of this section shall not apply to a
42 person in his dwelling, on his business premises or on real property owned or
43 leased by that person.
- 44 C. Subsection A, paragraphs 1, 2, 3, 7, 10, 11, 12 and 13 of this
45 section shall not apply to:

1 1. A peace officer or any person summoned by any peace officer to
2 assist and while actually assisting in the performance of official duties; or
3 2. A member of the military forces of the United States or of any
4 state of the United States in the performance of official duties; or
5 3. A warden, deputy warden or correctional officer of the state
6 department of corrections; or
7 4. A person specifically licensed, authorized or permitted pursuant to
8 a statute of this state or of the United States.
9 D. Subsection A, paragraphs 3 and 7 of this section shall not apply
10 to:
11 1. The possessing, transporting, selling or transferring of weapons by
12 a museum as a part of its collection or an educational institution for
13 educational purposes or by an authorized employee of such museum or
14 institution, if:
15 (a) Such museum or institution is operated by the United States or
16 this state or a political subdivision of this state, or by an organization
17 described in 26 United States Code section 170(c) as a recipient of a
18 charitable contribution; and
19 (b) Reasonable precautions are taken with respect to theft or misuse
20 of such material.
21 2. The regular and lawful transporting as merchandise; or
22 3. Acquisition by a person by operation of law such as by gift, devise
23 or descent or in a fiduciary capacity as a recipient of the property or
24 former property of an insolvent, incapacitated or deceased person.
25 E. Subsection A, paragraph 3 of this section shall not apply to the
26 merchandise of an authorized manufacturer of or dealer in prohibited weapons,
27 when such material is intended to be manufactured, possessed, transported,
28 sold or transferred solely for or to a dealer, a regularly constituted or
29 appointed state, county or municipal police department or police officer, a
30 detention facility, the military service of this or another state or the
31 United States, a museum or educational institution or a person specifically
32 licensed or permitted pursuant to federal or state law.
33 F. Subsection A, paragraph 1 of this section shall not apply to a
34 weapon or weapons carried in a belt holster ~~which holster~~ THAT is wholly or
35 partially visible, ~~or~~ carried in a scabbard or case designed for carrying
36 weapons ~~which scabbard or case~~ THAT is wholly or partially visible or carried
37 in luggage. Subsection A, paragraph 2 of this section shall not apply to a
38 weapon or weapons carried in a case, holster, scabbard, pack or luggage that
39 is carried within a means of transportation or within a storage compartment,
40 map pocket, trunk or glove compartment of a means of transportation.
41 G. Subsection A, paragraph 10 of this section shall not apply to
42 shooting ranges or shooting events, hunting areas or similar locations or
43 activities.
44 H. Subsection A, paragraph 3 of this section shall not apply to a
45 weapon described in section 13-3101, subsection A, paragraph ~~7~~ 8,

1 subdivision (e), if such weapon is possessed for the purposes of preparing
2 for, conducting or participating in lawful exhibitions, demonstrations,
3 contests or athletic events involving the use of such weapon. Subsection A,
4 paragraph 12 of this section shall not apply to a weapon if such weapon is
5 possessed for the purposes of preparing for, conducting or participating in
6 hunter or firearm safety courses.

7 I. Subsection A, paragraph 12 of this section shall not apply to the
8 possession of a:

9 1. Firearm that is not loaded and that is carried within a means of
10 transportation under the control of an adult provided that if the adult
11 leaves the means of transportation the firearm shall not be visible from the
12 outside of the means of transportation and the means of transportation shall
13 be locked.

14 2. Firearm for use on the school grounds in a program approved by a
15 school.

16 J. The operator of the establishment or the sponsor of the event or
17 the employee of the operator or sponsor or the agent of the sponsor,
18 including a public entity or public employee, is not liable for acts or
19 omissions pursuant to subsection A, paragraph 10 of this section unless the
20 operator, sponsor, employee or agent intended to cause injury or was grossly
21 negligent.

22 K. Misconduct involving weapons under subsection A, paragraph 9, 14 or
23 15 of this section is a class 3 felony. Misconduct involving weapons under
24 subsection A, paragraph 3, 4, 8 or 13 of this section is a class 4
25 felony. Misconduct involving weapons under subsection A, paragraph 12 of
26 this section is a class 1 misdemeanor unless the violation occurs in
27 connection with conduct ~~which~~ THAT violates ~~the provisions of~~ section
28 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section
29 13-3409 or section 13-3411, in which case the offense is a class 6 felony.
30 Misconduct involving weapons under subsection A, paragraph 5, 6 or 7 of this
31 section is a class 6 felony. Misconduct involving weapons under subsection
32 A, paragraph 1, 2, 10 or 11 of this section is a class 1 misdemeanor.

33 L. For the purposes of this section:

34 1. "Public establishment" means a structure, vehicle or craft that is
35 owned, leased or operated by this state or a political subdivision of this
36 state.

37 2. "Public event" means a specifically named or sponsored event of
38 limited duration THAT IS either conducted by a public entity or conducted by
39 a private entity with a permit or license granted by a public entity. Public
40 event does not include an unsponsored gathering of people in a public place.

41 3. "School" means a public or nonpublic kindergarten program, common
42 school or high school.

43 4. "School grounds" means in, or on the grounds of, a school.

1 D. A permittee who carries a concealed weapon and who fails to present
2 a permit for inspection on the request of a law enforcement officer is guilty
3 of a petty offense. A permittee shall not be convicted of a violation of
4 this subsection if the permittee produces to the court a legible permit that
5 is issued to the permittee and that was valid at the time the violation of
6 this subsection occurred.

7 E. The department of public safety shall issue a permit to an
8 applicant who meets all of the following conditions:

- 9 1. Is a resident of this state or a United States citizen.
- 10 2. Is twenty-one years of age or older.
- 11 3. Is not under indictment for and has not been convicted in any
12 jurisdiction of a felony.
- 13 4. Does not suffer from mental illness and has not been adjudicated
14 mentally incompetent or committed to a mental institution.
- 15 5. Is not unlawfully present in the United States.
- 16 6. Satisfactorily completes a firearms safety training program
17 approved by the department of public safety pursuant to subsection 0 of this
18 section. This paragraph does not apply to:

19 (a) A person who is an active duty Arizona peace officer standards and
20 training board certified or federally credentialed peace officer or who is
21 honorably retired as a federal, state or local peace officer with a minimum
22 of ten years of service.

23 (b) A person who is an active duty county detention officer and who
24 has been weapons certified by the officer's employing agency.

25 (c) A person who is issued a certificate of firearms proficiency
26 pursuant to subsection X of this section.

27 F. The application shall be completed on a form prescribed by the
28 department of public safety. The form shall not require the applicant to
29 disclose the type of firearm for which a permit is sought. The applicant
30 shall attest under penalty of perjury that all of the statements made by the
31 applicant are true. The applicant shall submit the application to the
32 department with a certificate of completion from an approved firearms safety
33 training program, two sets of fingerprints and a reasonable fee determined by
34 the director of the department.

35 G. On receipt of a concealed weapon permit application, the department
36 of public safety shall conduct a check of the applicant's criminal history
37 record pursuant to section 41-1750. The department of public safety may
38 exchange fingerprint card information with the federal bureau of
39 investigation for federal criminal history record checks.

40 H. The department of public safety shall complete all of the required
41 qualification checks within sixty days after receipt of the application and
42 shall issue a permit within fifteen working days after completing the
43 qualification checks if the applicant meets all of the conditions specified
44 in subsection E of this section. If a permit is denied, the department of
45 public safety shall notify the applicant in writing within fifteen working

1 days after the completion of all of the required qualification checks and
2 shall state the reasons why the application was denied. On receipt of the
3 notification of the denial, the applicant has twenty days to submit any
4 additional documentation to the department. On receipt of the additional
5 documentation, the department shall reconsider its decision and inform the
6 applicant within twenty days of the result of the reconsideration. If
7 denied, the applicant shall be informed that the applicant may request a
8 hearing pursuant to title 41, chapter 6, article 10.

9 I. On issuance, a permit is valid for five years, except a permit that
10 is held by a member of the United States armed forces, including a member of
11 the Arizona national guard or a member of the reserves of any military
12 establishment of the United States, who is on federal active duty and who is
13 deployed overseas shall be extended until ninety days after the end of the
14 member's overseas deployment.

15 J. The department of public safety shall maintain a computerized
16 permit record system that is accessible to criminal justice agencies for the
17 purpose of confirming the permit status of any person who claims to hold a
18 valid permit issued by this state. This information and any other records
19 that are maintained regarding applicants, permit holders or instructors shall
20 not be available to any other person or entity except on an order from a
21 state or federal court.

22 K. Notwithstanding subsection J of this section, it is a defense to
23 any charge for carrying a deadly weapon without a permit by a member of the
24 United States armed forces, including a member of the Arizona national guard
25 or a member of the reserves of any military establishment of the United
26 States, if the member was on federal active duty at the time the permit
27 expired and the member presents documentation indicating release from active
28 duty or reassignment from overseas deployment within the preceding ninety
29 days.

30 L. A permit issued pursuant to this section is renewable every five
31 years. Before a permit may be renewed, a criminal history records check
32 shall be conducted pursuant to section 41-1750 within sixty days after
33 receipt of the application for renewal. For the purposes of permit renewal,
34 the permit holder is not required to submit additional fingerprints.

35 M. Applications for renewal shall be accompanied by a fee determined
36 by the director of the department of public safety.

37 N. The department of public safety shall suspend or revoke a permit
38 issued under this section if the permit holder becomes ineligible pursuant to
39 subsection E of this section. The department of public safety shall notify
40 the permit holder in writing within fifteen working days after the revocation
41 or suspension and shall state the reasons for the revocation or suspension.

42 O. An organization shall apply to the department of public safety for
43 approval of its firearms safety training program. The department shall
44 approve a program that meets the following requirements:

- 45 1. Is at least eight hours in length.

- 1 2. Is conducted on a pass or fail basis.
- 2 3. Addresses all of the following topics in a format approved by the
- 3 director of the department:
- 4 (a) Legal issues relating to the use of deadly force.
- 5 (b) Weapon care and maintenance.
- 6 (c) Mental conditioning for the use of deadly force.
- 7 (d) Safe handling and storage of weapons.
- 8 (e) Marksmanship.
- 9 (f) Judgmental shooting.
- 10 4. Is conducted by instructors who submit to a background
- 11 investigation, including a check for warrants and a criminal history records
- 12 check.
- 13 P. If approved pursuant to subsection 0 of this section, the
- 14 organization shall submit to the department of public safety two sets of
- 15 fingerprints from each instructor and a fee to be determined by the director
- 16 of the department of public safety. On receipt of the fingerprints and fee,
- 17 the department of public safety shall conduct a check of each instructor's
- 18 criminal history record pursuant to section 41-1750. The department of
- 19 public safety may exchange this fingerprint card information with the federal
- 20 bureau of investigation for federal criminal history record checks.
- 21 Q. The proprietary interest of all approved instructors and programs
- 22 shall be safeguarded, and the contents of any training program shall not be
- 23 disclosed to any person or entity other than a bona fide criminal justice
- 24 agency, except ~~upon~~ ON an order from a state or federal court.
- 25 R. If the department of public safety rejects a program, the rejected
- 26 organization may request a hearing pursuant to title 41, chapter 6,
- 27 article 10.
- 28 S. The department of public safety shall maintain information
- 29 comparing the number of permits requested, the number of permits issued and
- 30 the number of permits denied. The department shall annually report this
- 31 information to the governor and the legislature.
- 32 T. The director of the department of public safety shall adopt rules
- 33 for the purpose of implementing and administering the concealed weapons
- 34 permit program including fees relating to permits and certificates that are
- 35 issued pursuant to this section.
- 36 U. This state and any political subdivision of this state shall
- 37 recognize a concealed weapon, firearm or handgun permit or license that is
- 38 issued by another state or a political subdivision of another state if both:
- 39 1. The permit or license is recognized as valid in the issuing state.
- 40 2. The permit or license holder is all of the following:
- 41 (a) Not a resident of this state.
- 42 (b) Legally present in this state.
- 43 (c) Not legally prohibited from possessing a firearm in this state.

1 V. For the purpose of establishing mutual permit or license
2 recognition with other states, the department of public safety shall enter
3 into a written agreement if another state requires a written agreement.

4 W. Notwithstanding the provisions of this section, a person with a
5 concealed weapons permit from another state may not carry a concealed weapon
6 in this state if the person is under twenty-one years of age or is under
7 indictment for, or has been convicted of, a felony offense in any
8 jurisdiction, even if the person's rights have been restored and the
9 conviction is expunged, set aside or vacated.

10 X. The department of public safety may issue certificates of firearms
11 proficiency according to the Arizona peace officer standards and training
12 board firearms qualification for the purposes of implementing the law
13 enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18
14 United States Code sections 926B and 926C). A law enforcement agency shall
15 issue to a law enforcement officer who has honorably retired a photographic
16 identification that states that the officer has honorably retired from the
17 agency. The chief law enforcement officer shall determine whether an officer
18 has honorably retired and the determination is not subject to review. A law
19 enforcement agency has no obligation to revoke, alter or modify the honorable
20 discharge photographic identification based on conduct that the agency
21 becomes aware of or that occurs after the officer has separated from the
22 agency.